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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060901
Party	Plaintiff Cupid Charities, Inc.
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Date	10/23/2015
Attachments	901 - Filing.pdf(348090 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CUPID CHARITIES, INC.,

Petitioner,

v.

THE DEW, LLC,

Registrant.

Cancellation No.: 92060901

Notice of Final Determination
in Civil Action

Mark: UNDIE RUN
Registration No.: 4615907

NOTICE OF FINAL DETERMINATION IN CIVIL ACTION

Cupid Charities, Inc. (“Petitioner”) hereby submits notice to the Trademark Trial and Appeal Board (“Board”) of the final determination of Civil Action No. 1:15-cv-00348-WYD-KLM, *Cupid Charities, Inc. v. The DEW, LLC*, filed in the U.S. District Court for the District of Colorado.

On April 27, 2015, the Board granted a consented Motion to Suspend this proceeding, pending final determination of Civil Action No. 1:15-cv-00348-WYD-KLM, *Cupid Charities, Inc. v. The DEW, LLC* (the “Civil Action”). Pursuant to the Board’s Order, the parties shall notify the Board within twenty days after the final determination of a civil action, meaning a dispositive ruling that ends litigation on the merits and where no appeal has been filed therefrom. *See also* T.B.M.P. §510.02(b).

On September 22, 2015, The U.S. District Court for the District of Colorado issued an Order Adopting and Affirming the Recommendation of United States Magistrate Judge and ordering a default and default judgment in favor of Petitioner, Cupid Charities, Inc., and the Clerk entered a default judgment against The DEW. *See Exhibits A, B*. Pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A), Registrant, The DEW, LLC had thirty days

from the entry of judgment on September 22, 2015 or until October 22, 2015 to file a notice of appeal. Registrant failed to file a notice of appeal within the thirty days afforded under Rule 4. Accordingly, the case has reached a final determination pursuant to T.B.M.P. §510.02(b).

On September 29, 2015, the U.S. District Court for the District of Colorado issued its Order of Judgment, clarifying the relief granted in the Court's prior Default Judgment Order of September 22, 2015. *Exhibit C*. In the Court's Order of Judgment, the Court expressly confirmed that its September 22, 2015 Order ordered the cancellation of The DEW, LLC's "U.S. Registration Nos. 4,615,907, 4,615,908, and 4,133,557." *Id.* at ¶ 2.

Therefore, pursuant to the Court's Order of Judgment, Petitioner respectfully requests the cancellation of U.S. Registration Nos. 4,615,907, 4,615,908, and 4,133,557.

DATED: October 23, 2015

PERKINS COIE LLP

By:



Amanda Tassar
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ATTORNEYS FOR CUPID CHARITIES, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF FINAL DETERMINATION IN CIVIL ACTION** and supporting exhibits have been served on The DEW, LLC by mailing said copy on October 23, 2015, via First Class Mail, postage prepaid to:

JOSHUA G GIGGER
STOEL RIVES LLP
201 SOUTH MAIN STREET, SUITE 1100
SALT LAKE CITY, UTAH 84111

By:

A handwritten signature in black ink, appearing to read 'Alex Garcia', written over a horizontal line.

Alexander Garcia

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Wiley Y. Daniel

Civil Action No. 15-cv-00348-WYD-KLM

CUPID CHARITIES, INC.,

Plaintiff,

v.

The DEW, LLC,

Defendant.

**ORDER ADOPTING AND AFFIRMING RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

THIS MATTER is before the Court on the Recommendation of United States Magistrate Judge ("Recommendation"), filed September 3, 2015. (ECF No. 35). In the Recommendation, Magistrate Judge Mix recommends that her previous Order to Show Cause (ECF No. 34) be made absolute and (1) that default and default judgment be entered against Defendant Dew based on failure to comply with Court Orders and its lack of counsel in this case; and (2) that the counterclaims against Plaintiff be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute, for failure to comply with Court Orders, and for lack of counsel. (Recommendation at 2-3). The Recommendation is incorporated herein by reference. See 28 U.S.C. § 36(b)(1)(B), Fed. R. Civ. P. 72(b).

Under Fed. R. Civ. P. 72, written objections are due within fourteen (14) days after service of a copy of the Recommendation. Here, no objections were filed to the Recommendation. No objections having been filed, I am vested with discretion to review the Recommendation "under any standard [I] deem[] appropriate." *Summers v. Utah*,

927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). Nonetheless, though not required to do so, I review the Recommendation to "satisfy [my]self that there is no clear error on the face of the record."¹ See Fed. R. Civ. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I find that Magistrate Judge Mix's Recommendation is thorough, well-reasoned and sound. I agree with Magistrate Judge Mix that that default and default judgment should be entered against Defendant Dew and that the counterclaims against Plaintiff should be dismissed pursuant to Fed. R. Civ. P. 41(b).

Based on the foregoing, it is

ORDERED that the Recommendation of United States Magistrate Judge Mix (ECF No. 35) is **AFFIRMED** and **ADOPTED**. In accordance therewith, it is

ORDERED that the Order to Show Cause (ECF No. 34) is **MADE ABSOLUTE**. Accordingly, default and default judgment shall enter against Defendant Dew based on failure to comply with Court Orders and its lack of counsel in this case. Additionally, the counterclaims against Plaintiff are **DISMISSED** pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute, for failure to comply with Court Orders, and for lack of

¹ Note, this standard of review is something less than a "clearly erroneous or contrary to law" standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a *de novo* review, Fed. R. Civ. P. 72(b).

counsel.

Dated: September 22, 2015

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Senior United States District Judge

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00348-WYD-KLM

CUPID CHARITIES, INC.,

Plaintiff,

v.

The DEW, LLC,

Defendant.

DEFAULT JUDGMENT

Pursuant to and in accordance with Fed. R. Civ. P. 58(a) and the Order Adopting and Affirming Recommendation of United States Magistrate Judge, filed on September 22, 2015, by the Honorable Wiley Y. Daniel, Senior United States District Judge, and incorporated herein by reference as if fully set forth, it is hereby

ORDERED that the Recommendation of United States Magistrate Judge Mix [ECF Doc. No. 35] is **AFFIRMED** and **ADOPTED**. It is further

ORDERED that that the Order to Show Cause (ECF No. 34) is MADE ABSOLUTE. Accordingly, default and default judgment shall enter in favor of Plaintiff, Cupid Charities, Inc., and against Defendant, The Dew, LLC, based on failure to comply with Court Orders and its lack of counsel in this case. It is further

ORDERED that the counterclaims against Plaintiff are **DISMISSED** pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute, for failure to comply with Court Orders, and for lack of counsel. It is further

ORDERED that Plaintiff shall have its costs by the filing of a Bill of Costs with the Clerk of this Court within fourteen (14) days of entry of judgment, and pursuant to the procedures set forth in Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1.

DATED at Denver, Colorado this 22nd day of September, 2015.

FOR THE COURT:

JEFFREY P. COLWELL, CLERK

/s/ Robert R. Keech
Robert R. Keech,
Deputy Clerk

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 15-cv-00348-WYD-KLM

CUPID CHARITIES, INC.,

Plaintiff,

v.

The DEW, LLC,

Defendant.

ORDER OF JUDGMENT

THIS MATTER is before the Court on the Expedited Motion for Entry of Order of Judgment (ECF No. 38). By way of background, a default and default judgment has been entered in favor of Cupid Charities and against The DEW on all claims brought by Cupid Charities. (ECF Nos. 36 and 37). Accordingly, I grant the pending motion (ECF No. 38), and order the following relief as requested in Plaintiff's Amended Complaint (ECF No. 11):

- a) Judgment is entered to reflect that Cupid Charities' use of CUPID'S UNDIS RUN (whether or not capitalized) does not violate § 32 of the Lanham Act, 15 U.S.C. § 1114, or constitute trademark infringement under the Lanham Act or the common law of Colorado, of Defendant's marks, U.S. Registration Nos. 4,615, 907, 4,615, 908, and 4,133,557.

- b) Pursuant to § 14 of the Lanham Act, 15 U.S.C. § 1064, and § 39 of the Lanham Act, 15 U.S.C. § 1119, Defendant's marks, U.S. Registration Nos. 4,615, 907, 4,615, 908, and 4,133,557, are cancelled.
- c) Defendant The DEW, its agents, servants, employees, attorneys are enjoined from interfering with, or threatening to interfere with, use of the mark CUPID'S UNDIE RUN (whether or not capitalized) by Cupid Charities or its agents, employees, representatives, sponsors, beneficiaries, licensees, vendors, customers, successors, or assigns, including Cupid Charities' use of CUPID'S UNDIE RUN (whether or not capitalized) in any social media platforms including but not limited to BuzzFeed, Facebook, Twitter, and Instagram.
- d) Defendant The DEW is ordered to cooperate in the reinstatement of Cupid Charities' social media accounts, including but not limited to its accounts with BuzzFeed, Facebook, Twitter, and Instagram.
- e) It is ordered that Defendant has not suffered any harm and is not entitled to damages or other relief under 15 U.S.C. §1117.
- f) Cupid Charities is entitled to damages in an amount to be proven. Cupid Charities shall file a motion for damages not later than 21 days after the date of this order. Upon the Court's resolution of such motion, Judgment as to the amount of damages, attorney fees, and costs will be entered in favor of Plaintiff and against the Defendant.

Dated: September 29, 2015

BY THE COURT:

/s/ Wiley Y. Daniel
WILEY Y. DANIEL,
SENIOR UNITED STATES DISTRICT JUDGE